



SAY WHAT?

**DOMESTIC VIOLENCE COURT
FOR ATTORNEYS WHO THINK
DV MEANS DIRECTED
VERDICT**



AGENDA

Where we are today

How we got here

What the bench wants you to know

Plea for help

2023 BY THE NUMBERS

- ❖ Data courtesy of Bluegrass Domestic Violence Prevention Coalition, publication forthcoming



2023 BY THE NUMBERS

- ❖ Last year, the Fayette Family Court adjudicated 2,443 petitions for DVO/IPO
- ❖ 25% of all petitions did not allege a family relationship, dating relationship, or sexual violence
- ❖ 74% of Petitioners were women
- ❖ 51% of all parties were white
- ❖ 10% of cases conducted w/interpreters in at least 17 unique languages



2023 BY THE NUMBERS: CASE OUTCOMES

- ❖ 29.86% granted long-term order
 - ❖ 23.98% denied after hearing
 - ❖ 26.31% dismissed at Petitioner's request
 - ❖ 6.46% resolved by agreed order
 - ❖ 5.45% rescinded without service
- ❖ So, 54% of petitions made it to full hearing. Of those, 55% were granted and 45% denied.



MAY 2024, FOR EXAMPLE

- ❖ Courthouse open 22 days
- ❖ Judge A heard DV hearings on 13 days
- ❖ Judge B heard DV hearings on 16 days
- ❖ Judge C heard DV hearings on 17 days
- ❖ Judge D heard DV hearings on 17 days
- ❖ Obvious impact on availability for other hearings





HOW DID WE GET HERE?



2015 LEGISLATIVE CHANGES

- All Domestic Violence statutes repealed and reenacted
- Two separate, parallel schemes:
- KRS 403.715-785 is domestic violence, EPO, DVO
 - May be filed by “family member” or “member of an unmarried couple”
 - Relationship-based
- KRS 456.010-180 is interpersonal violence, TIPO, IPO
 - For victims of dating violence, stalking, or sexual assault
 - Does NOT provide general civil protective orders
 - Conduct-based, definitions come from criminal law



“STALKING” OPENED THE FLOODGATES

25% of all petitions now alleges stalking.

Must meet criteria of KRS 508.140 or 150.

“Must at a minimum provide by a preponderance of the evidence that an individual engaged in **two or more acts directed at the victim** that **seriously alarmed, annoyed, intimidated, or harassed the victim**, that served **no legitimate purpose** and would have caused a **reasonable person** to suffer substantial mental distress, and these acts **may occur again**...Additionally, the individual must prove that there was an **implicit or explicit threat by the perpetrator that put the victim in reasonable fear of sexual contact, physical injury or death.**”

Halloway v. Simmons, 532 S.W.3d 158 (Ky.App. 2017)

If any element is missing, it is not stalking. COA has had pretty stringent view of “course of conduct” and “threat.”



IS THIS STALKING?

- “My neighbor has called CPS on me. I no longer feel comfortable around her.”
- “I do not personally know this respondent. I came home and found her[having sex] in my bed, and I just think that is very disrespectful”
- “She is married to a man I have been talking to. She has sent me over 40 text. Told me she’d beat my a\$\$ if I don’t leave him alone. Now she is threatening to come to my work and get me fired.”
- Neighbors playing loud music
- Person sells you drugs and you don’t pay and they keep “harassing” you to pay them
- “Came to my residence uninvited and threw a brick through my window”



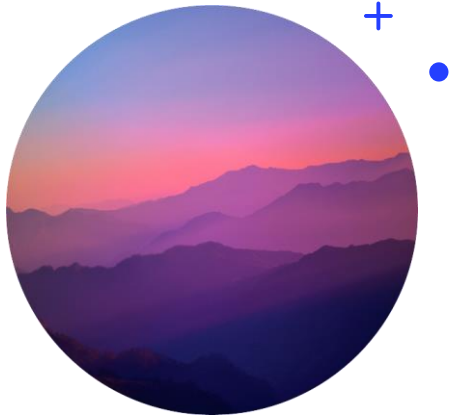
IS THIS STALKING?

- I worked with him from August 2022 until July 2023. During that time, he asked me out three times and I declined. On 7/22/2023 he sent me a text message stating "I will be highly offended if you change your passcode." I immediately changed the passcode to my garage, the locks to my house, and all passwords. I blocked him. 8/18/2023 I received 22 texts from an unknown number stating things like I will always love you and I will always know where you are. 9/26/2023 he showed up at my daughter's soccer game. He has never met her. I could not leave her there alone, so I stayed through the game. As soon as I was in my car I received a text from a new number stating "good game." In October, he sent flowers to my house with a card saying I miss you.....



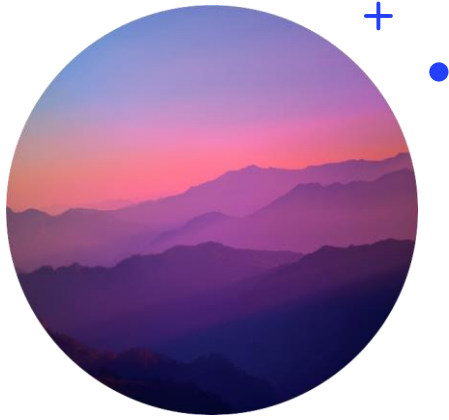
IS THIS STALKING?

-12/8/2023 I got a text from another number saying I looked good on my couch. 12/15/23 I got a text asking me if I enjoyed my night with Greg Smith, who had stayed over the night before. Next day I got additional texts asking if I Greg and I did certain sexual positions. I am scared he will never leave me alone and may do something to me or my child.
- Adapted from *Allen v. Elder*, 682 S.W.3d 32 (Ky.App. 2023)



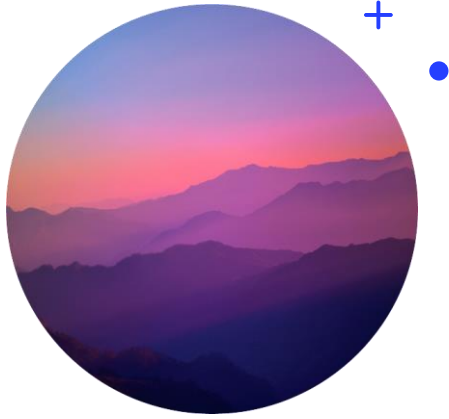
COA: MEANINGFUL HEARING

- Cannot be cursory hearing.
- Must be full evidentiary hearing with sworn testimony and witnesses
- Rules of evidence apply.
- COA very regularly reverses DVOs and IPOs for failure to provide meaningful evidentiary hearing. Even though statute has been amended from “full hearing” to “meaningful hearing” interpretation has heightened.
- *See e.g., Wright v. Wright*, 181 S.W.3d 49 (Ky.App. 2005); *Rankin v. Criswell*, 277 S.W.3d 621 (Ky.App. 2008); *Clark v. Parrett*, 559 S.W.3d 872 (Ky.App. 2018); *Tipan v. Tipan*, 582 S.W.3d 70 (Ky.App. 2019)
- Countless unpublished cases too – still at least one per month.



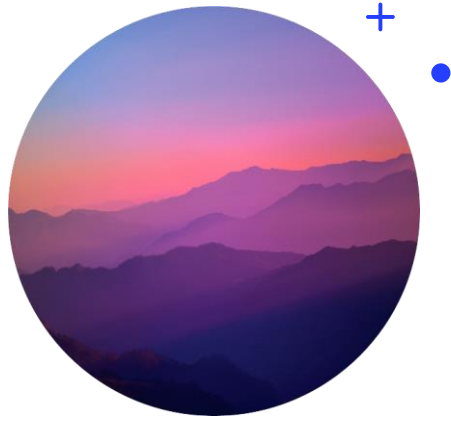
COA: GAL'S FOR MINORS

- *Smith v. Doe*, 627 S.W.3d 903 (Ky. 2021)
 - Unrepresented minor who is Petitioner or Respondent must have a guardian ad litem appointed per CR 17, for either IPO or DVO cases.
 - Many judges and practitioners already did this.
 - Provides no mechanism for payment of that person, KRS 403.730(3) prohibits requiring Petitioner to pay a fee
 - Note: Isn't CR 17 for defendants/respondents? Other rules for petitioners?
- *Hamilton v. Milbry*, 676 S.W.3d 42 (Ky.App. 2023)
 - "We believe *Smith* requires that a minor child who is listed as a party on the petition for protection is in need of an appointed guardian." *Id.* at 47.
 - "Pursuant to *Smith*, we believe that such a petition filed on behalf of a child and which concerns alleged acts of violence as to a minor, requires the appointment of a GAL." *Id.*
 - Actual Petition in the case did not do either but listed child as "other protected person" – still reversed.
 - Still no mechanism for payment or direction



GENERAL ASSEMBLY: GAL'S

- 2024 HB 436
- For IPOs, Ct. shall appoint when petition filed on behalf of minor who is victim of dating violence, sexual assault, or stalking, or “in which the minor is named as a respondent or petitioner.”
- For DVOs, Ct. shall appoint when petition filed on behalf of minor who is victim of domestic violence and abuse or “in which a minor is named as a respondent or petitioner.”
- Creates mechanism for payment of fee: no more than \$500, paid by Finance and Administration Cabinet
- *Hamilton v. Milbry* may still require in more contexts?



DEEP DIVE CLE ON GAL'S

SEPTEMBER 10, 2024

11:00 – 1:00

1. File a written Entry of Appearance and introduce yourself on the docket. Every time.
2. There is no zoom link for this docket. Appear in person. Court may allow witnesses via zoom at evidentiary hearings – ask, don't assume.
3. Expect an off-docket hearing. Temporary orders may be amended by agreement – try to talk to other attorney if possible.
4. Expect a GAL if children are involved.
5. The parties may agree - *Alford* stipulation is possible.
6. There is no statutory or case law requirement that Petitioner list every violence act in the petition. Court can consider history and context.

WHAT JUDGES WANT IN DV COURT

8. Remember the standard is preponderance of the evidence!
9. If you enter an agreed civil restraining order in a companion CI action, it also needs to be entered in DV action.
10. Court may order any relief “the Court believes will be of assistance in eliminating future acts of domestic violence and abuse” – no requirement that it be at request of Petitioner.
11. Read the *current* statute!

WHAT JUDGES WANT IN DV COURT

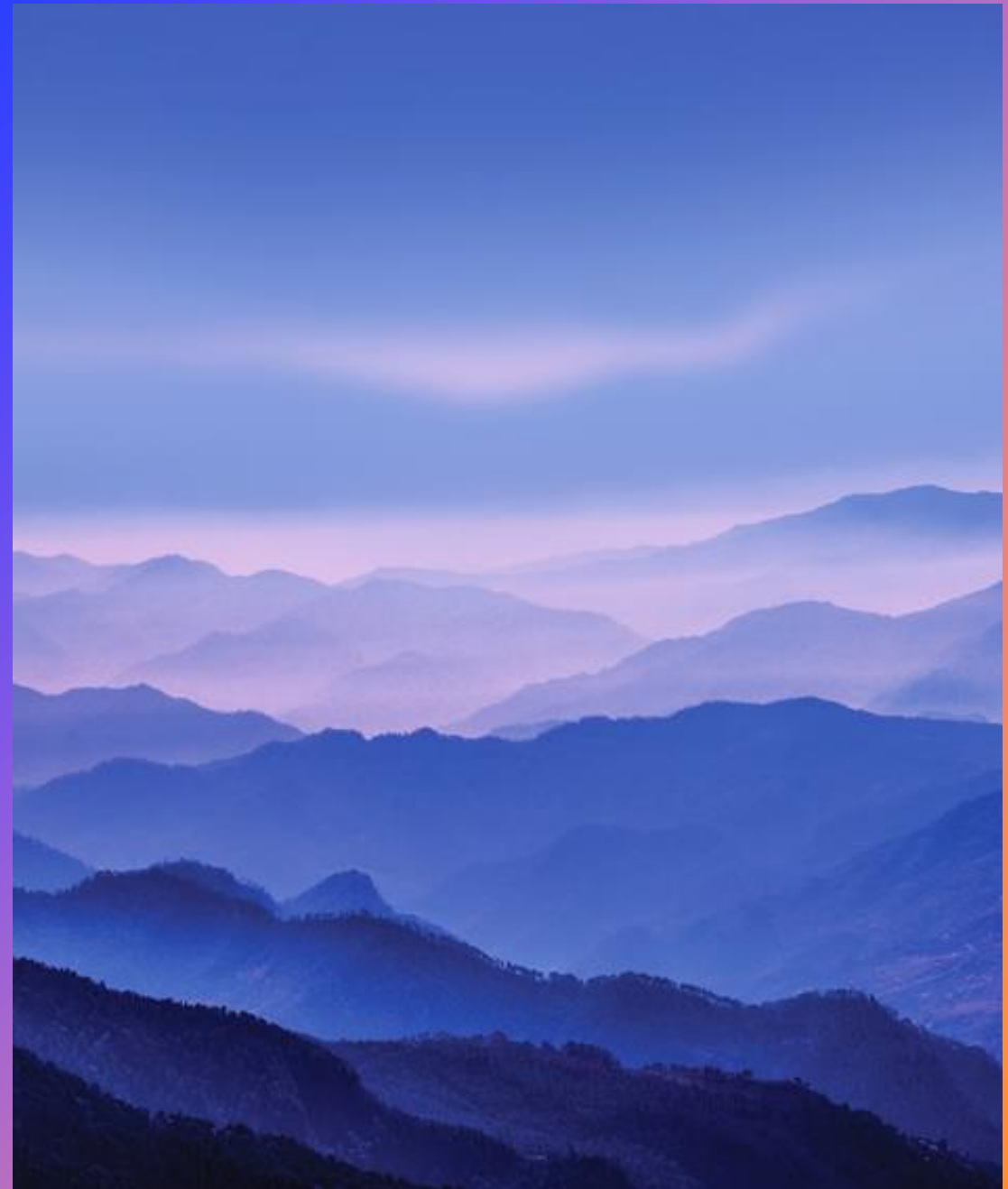
A PLEA FOR HELP

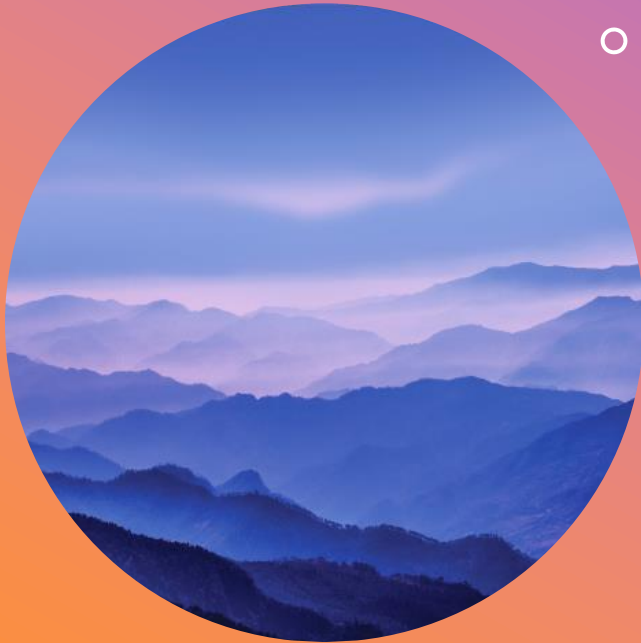
Consider serving as GAL in DV court.

For cases where minors are actual parties, this will look like traditional representation – may not need much specialized GAL experience.

For cases where children are affected but not necessarily parties, this looks more like traditional GAL work.

Read the forthcoming report from the Bluegrass Domestic Violence Prevention Coalition – they have several ideas.





THANK YOU

Hon. Ross Ewing
Judge, Fayette Circuit Court
Division 5, Family Court